

REMARKS

Applicant requests that Examiner enter this supplemental amendment, in accordance with MPEP 714.03(a). This supplemental response is limited to the placement of the application in condition for allowance under 37 CFR 1.111(a)(2)(C). No new subject matter has been added.

The claim amendments made in this Supplemental Response are based on the claims filed in the Supplemental Response, filed October 1, 2008, to the Non-Final Office Action dated March 14, 2008. Claims 1-12, 24, 28, 31-32, 34-35, and 37-43 were pending in this application. Claims 1, 2, 4, 5, 7, 24, 31, 32, 34, 35, and 37-43 are currently amended. Claim 28 is cancelled. Claim 68 is newly added. No new subject matter has been added.

Examiner's Interview of October 7, 2008

Applicant thanks the Examiner for the courtesy of the telephonic interview of October 7, 2008 (hereinafter the "interview"). Examiner Gitomer, Applicant Marc Hellerstein, and Applicant's representative, Brian Ho, were present for the interview. All claims were discussed generally in the interview with respect to pending Final Office Action and the Response and Supplemental Response thereto. In particular, Applicant Hellerstein explained the primary differences between the methods of the cited Rittenberg *et al.* references and the claimed methods. Applicant believes that agreement was reached regarding the absence in the Rittenberg *et al.* references of methods for determining the rate of metabolism. Particularly, the Rittenberg *et al.* references do not teach quantifying the amount of ²H released into body, as claimed (*see e.g.*, steps (c) and (d) of claim 1). Accordingly, Applicant believes that agreement was reached that the present claims are novel and nonobvious over the cited references. Agreement was also reached as to the filing of the present supplemental response. This supplemental response, in part, implements the Examiner suggested amendments to claim 1, which are reflected in the current amended claim set. Applicant believes that all amendments and remarks presented herein are consistent with the agreement reached during the interview with regards to allowability of the present claims.

Amendments

Amendment and/or cancellation of certain claims is in no way an admission or acquiescence to the Examiner's rejection and is not to be construed as a dedication to the public any of the subject matter of the claims as previously presented.

Claim 1 has been amended in accordance with the Examiner's request, primarily to clarify the differences between the Rittenberg *et al.* references and the claimed methods. Amendments to claims 2, 4, 5, 7, 24, 31, 32, 34, 35, and 37-43 have been made to reflect the amendment claim 1 and/or to otherwise clarify the language. Claim 24 has also been amended to more closely match the language of claim 1 and to clarify the method by which a proportion or storage rate of labeled fatty acids is calculated. New claim 68 has been presented to substantially match dependent claim 24, with respect to proportion or rate of storage of sugars, rather than fatty acids. Support for claim 68 may be found at least on page 14 of the disclosure, as filed. No new subject matter has been added.

Claim Rejections – 35 U.S.C. § 102(b)

Rittenberg et al. (J. of Biol. Chem., 1936, v113, p. 505-510); Rittenberg et al. (J. of Biol. Chem., 1937, v117, p. 485-490); and Rittenberg et al. (J. of Biol. Chem., 1937, v120, p. 503-510)
(the "Rittenberg et al. references")

Claims 1, 4-13, 18-24, 28-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by each of Rittenberg.

Applicant believes that agreement was reached during the interview regarding the novelty of the pending claims over the Rittenberg *et al.* references. Accordingly, Applicant respectfully request that this basis for rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 103(a)

Rittenberg et al. (J. of Biol. Chem., 1936, v113, p. 505-510); Rittenberg et al. (J. of Biol. Chem., 1937, v117, p. 485-490); and Rittenberg et al. (J. of Biol. Chem., 1937, v120, p. 503-510) in view of Jones et al. (Am. J. Physiol. Endocrinol. Metab., 2001); (hereinafter “each of Rittenberg in view of Jones”)

Applicant believes that agreement was reached during the interview regarding the nonobviousness of the pending claims over the Rittenberg *et al.* references in combination with Jones *et al.* Accordingly, Applicant respectfully request that this basis for rejection be withdrawn.

Claim Rejections – 35 U.S.C. § 112 – Second Paragraph

Applicant maintains the remarks presented in the Supplemental Response of October 1, 2008. The terms “one or more mass isotopomers of ^2H labeled water” at issue have been removed from the claims. Accordingly, this basis of rejection is now moot. Applicant therefore respectfully requests that this basis for rejection be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No.: 03-1952 referencing Docket No.: 416272005200. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: October 21, 2008

Respectfully submitted,

By

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